MONTANA LEGISLATIVE HISTORY

Chapter 662 1983

Bill H _____ S 414 Original bill & history ___C

H. Committee on Taxation			S. Committee on Taxation		
Hearing Date(s)	March	✓C	Hearing Date(s)	Feb 17	✓C
	April 2	✓C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

MINUTES OF THE MEETING OF THE HOUSE TAXATION COMMITTEE
March 11, 1983

The meeting was called to order at 8:00 a.m. by Chairman Yardley. Roll call was taken and all committee members were present.

Testimony was heard on SB 227, SB 243, SB 384 and SB 414.

Executive action was taken on SB 243 during this meeting.

SENATE BILL 414

SENATOR ROGER ELLIOTT, District 8, sponsor of the bill, said SB 414 is a bill that relates to Subchapter S corporations. He said Subchapter S corporations were started by the federal government in about 1964, which would eliminate double taxation for corporations and would allow the corporations to be treated as partnerships. When the bill was originally passed by the Internal Revenue Service, there were some fairly tight restrictions in the law because the IRS was concerned about loss of revenue. Through the years those restrictions have been taken off. When a change is made in the federal statutes, a change is usually made in the state statutes.

SENATOR ELLIOTT said accountants have problems trying to keep two separate record books - one for federal and one for state. That is what they would be facing if they do not keep the Subchapter S law in line with that of the federal government.

SENATOR ELLIOTT said HB 621 puts all the federal statutes into the state statutes. He said he doesn't feel that is necessary.

Proponents

MIKE HOLLAND, a certified public accountant, said he feels SB 414 is much simpler than HB 621. He said the election period is changed from 30 days to 75 days in SB 414. He asked for the committee's support of SB 414.

Opponents

DAN BUCKS, representing the Department of Revenue, said he had spoken in front of the Senate Taxation Committee in favor of HB 621. The Department prefers HB 621 over SB 414 because HB 621 enacts into state law the new federal provisions on small business corporations. Senate Bill 414 says whenever the federal government changes their Subchapter S laws, it automatically changes the state's small business laws. They feel it is better for the state to come in and enact the changes everytime because

there are fiscal affects and changes that need to be taken into account. There are clearer provisions in HB 621 as to the timing of election and those provisions conform exactly to the federal provisions.

MR. BUCKS said in the cases of both HB 621 and SB 414, a fiscal problem needs to be addressed. That problem arises out of the language of the current investment law. That language enables corporations that are either electing small business corporations or corporations that have not elected to be small business corporations but are eligible to elect to be small business corporations to claim the investment credit. When you increase the number of shareholders from 10 to 35, there will be a number of expanded corporations that will be able to take the investment credit. As a consequence of that, the Department is estimating a $1.25 million to a $1.5 million per year impact. If we are going to conform to the federal law, we need to fix this fiscal impact by looking at the investment credit law or amending one of the two bills to account for that fiscal impact.

MR. BUCKS said there should not be automatic conformance. The legislature should look at federal changes before the state law is changed.

Questions were heard from the committee.

REPRESENTATIVE REAM asked if the fiscal impact is comparable with both SB 414 and HB 621. Mr. Bucks said that is correct.

REPRESENTATIVE SWITZER said he would like to have "election" explained. Mr. Holland said a corporation that wishes to be a Subchapter S corporation has so many days after the first of the fiscal year to do that. Under federal law, that election has to be made in the first 75 days and under state law, the election has to be made in the first 30 days.

SENATOR ELLIOTT, in closing, said the fiscal problem affects both bills. Multistate corporations benefit from the investment credit. Senator Elliott said if we use our ingenuity, we might be able to word an amendment, to the bill, to take care of that problem.

SENATOR ELLIOTT said the state legislature only meets every two years. Congress meets regularly and so they can change their laws when needed. Senator Elliott said he has a great deal of faith with IRS in this area and this would minimize the number of bills that the legislature has to deal with every year on this subject.

SENATOR ELLIOTT asked for a favorable vote on SB 414.

The hearing on SB 414 was closed.

VISITORS' REGISTER

HOUSE TAXATION COMMITTEE

BILL SB 414 Date March 11, 1983

SPONSOR Senator Elliott

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Mike Holland	Helena Mt	Kindred Holland & Co	X	
Ann Bullock	Helena	MT Soc. of CPAs	X	
Don Bucks	Helena	Dept. of Revenue.		X
Robert Barkus	Boulder Mont	County of Jefferson	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

INTRODUCED: 02/15/83
REFERRED TO COMMITTEE ON TAXATION: 02/15/83
HEARING: 3/2/83
REPORT: 3/2/83, DO PASS
2ND READING: 03/03/83 AYES: 49; NAYS: 0
3RD READING: 03/04/83 AYES: 47; NAYS: 0

TRANSMITTED TO HOUSE: 3/4/83
REFERRED TO COMMITTEE ON TAXATION: 03/07/83
HEARING: 3/18/83
REPORT: 03/22/83, BE CONCURRED IN
2ND READING: 03/23/83, BE CONCURRED IN AYES: 74; NAYS: 1
3RD READING: 03/25/83, BE CONCURRED IN AYES: 93; NAYS: 3

RETURNED TO SENATE: 3/25/83

TRANSMITTED TO GOVERNOR: 03/31/83
SIGNED: 04/05/83, CHAPTER 383

SB 414 -- ELLIOTT, HAGER, CRIPPEN, ET AL. -- TO COUPLE MONTANA'S DEFINITION OF "SMALL BUSINESS CORPORATION" TO THE FEDERAL DEFINITION FOR PURPOSES OF THE CORPORATE LICENSE TAX; ... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

INTRODUCED: 02/15/83
REFERRED TO COMMITTEE ON TAXATION: 02/15/83
HEARING: 2/17/83
REPORT: 02/17/83, DO PASS, AS AMENDED
2ND READING: 02/19/83 AYES: 47; NAYS: 0
3RD READING: 02/22/83 AYES: 48; NAYS: 1

TRANSMITTED TO HOUSE: 02/22/83
REFERRED TO COMMITTEE ON TAXATION: 02/28/83
HEARING: 3/11/83
REPORT: 04/13/83, BE CONCURRED IN, AS AMENDED
2ND READING: 04/14/83, BE CONCURRED IN AYES: 87; NAYS: 2
3RD READING: 04/15/83, BE CONCURRED IN AYES: 92; NAYS: 4

RETURNED TO SENATE WITH AMENDMENTS: 4/15/83
2ND READING: 04/20/83, BE CONCURRED IN AYES: 50; NAYS: 0
3RD READING: 04/21/83, BE CONCURRED IN AYES: 50; NAYS: 0

TRANSMITTED TO GOVERNOR: 4/21/83
SIGNED: 4/28/83, CHAPTER 667

SB 415 -- CONOVER, GRAHAM, BOYLAN -- TO REVISE AND CLARIFY CERTAIN SECTIONS RELATING TO AGRICULTURAL SEED; ... AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

INTRODUCED: 02/15/83
REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION: 02/15/83
HEARING: 2/18/83
REPORT: 02/18/83, DO PASS
2ND READING: 02/21/83 AYES: 49; NAYS: 0
3RD READING: 02/23/83 AYES: 49; NAYS: 0

TRANSMITTED TO HOUSE: 02/23/83
REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION: 02/28/83
HEARING: 3/11/83

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 17, 1983

The twenty-ninth meeting of the Taxation Committee was called to order by Chairman Pat M. Goodover at 8 a.m. in Room 415 of the Capitol Building.

ROLL CALL: All members were present except Senator Lynch. Several of the members were excused for part of the meeting (see the roll call sheet) to attend other committee meetings they were involved in, but were otherwise present.

CONSIDERATION AND DISPOSITION OF SENATE BILL 399: Senator Halligan moved that SB 399 be tabled. The motion was seconded. Chairman Goodover stated that the sponsor had requested that the bill be tabled. A vote was taken on the motion, and the bill passed unanimously.

CONSIDERATION OF SENATE BILL 414: Senator Roger Elliott, Senate District 8, said this bill conforms the Montana statutes to the Internal Revenue Code as far as subchapter S corporations are concerned. Sub S corporations are taxed similar to partnerships. SB 414 recognizes that the IRC allows up to 35 shareholders, up from the 15 shareholders allowed in the past. Senator Elliott directed a question to Cort Harrington, the committee's staff attorney, concerning a statement of intent, and Cort stated that none was required for this bill. The stricken material on pages 3, 4, and 5 duplicates what is in the federal code.

PROPONENTS

Joe Loendorf, an accountant at Anderson ZurMuehlen & Co. in Helena, submitted written testimony, attached as Exhibit A.

OPPONENTS

Jerry Foster, representing the Department of Revenue, opposed the bill. A similar bill in the House was introduced by Representative Dan Yardley (HB 621). Please consider that version rather than this one. This one causes retroactive application in going back 5 years. This doesn't require taxpayers to file their election with the state (on Department of Revenue forms), and we don't like that. The House version provides a time by which a taxpayer has to file an election with the state.

In closing, Senator Elliott noted that the IRC requires an election to be filed 30 to 60 days into the fiscal year, while the Department of Revenue allows the election to be filed any time within the year to which it applies (if they can prove the intent was there to be a subchapter S corporation).

Questions from the committee were called for.

Senator Turnage moved that the following amendments to SB 414 be adopted:

Page 1, line 24.
Following: "1954"
Insert: ", and thereafter has filed a copy thereof with the department"

Page 6, line 7.
Following: "1982"
Strike: ","
Insert: "."

Page 6, lines 8 and 9.
Strike: lines 8 and 9 in their entirety

The motion was seconded.

Senator Norman asked why we couldn't just say that the state law will follow the federal law. Mr. Foster replied that SB 414 will bring Montana law into conformity with the federal law. Mr. Foster objected to filing a copy of federal returns with the state and didn't think it would be burdensome to file a separate form with the state. Some corporations want to file a sub-S election with the federal government but not with the state.

Senator Turnage wondered what the Department of Revenue could do controlwise by requiring a separate election to be filed with the state and said language would have to be put in the bill to that effect. A corporation may not want to file an election with the state. The only difference is that federal returns elect to the federal code and Montana elects to the Montana code.

Senator Brown called for the question. Senators Brown, Elliott, Crippen, Severson, Norman, Gage, Halligan, Turnage, and Goodover were present for the vote, and all voted aye. The motion to amend passed.

Senator Crippen then moved that SB 414 DO PASS AS AMENDED. The motion was seconded and passed unanimously among those members present.

CONSIDERATION OF SENATE BILL 330: Senator Jack Galt, Senate District 23, the sponsor of this bill, introduced George Donnelly, representing the National Guard Association.

PROPONENTS

Mr. Donnelly recommended the bill favorably. He recalled that when the Guard had institutions duty during the strike, the special license plates were a good means of entry control and could be used that way in any state duty or state disaster.

Major Dick Mooney, the National Guard state recruitment and retention manager, submitted written testimony, attached as Exhibit B.

EXHIBIT A
DATE 2-17 3
SB 414

NAME: Joseph G Loendorf CPA DATE: 2-17-83

ADDRESS: Box 1147 Helena MT

PHONE: 442-3540

REPRESENTING WHOM? Anderson Zurmuehlen & Co Certified Public Accountants

APPEARING ON WHICH PROPOSAL: S.B. 414

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Due to the enactment of the "Subchapter S Revision Act of 1982" (October 19, 1982) it is important that Montana conform to the "New Act" for purposes of tax administration. The "New Act" accomplishes a major goal of reducing the differences in tax treatment between a corporation electing Sub S and a partnership. The "New Act" also eliminates some of the unintended "traps" that have caused problems for the unwary.

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

REPRESENTATIVE NORDTVEDT said the resolution should be changed to say interim committee or Revenue Oversight Committee. It should be one or the other.

SENATOR GOODOVER suggested amending the resolution to make the body of the resolution consistent with the title of the resolution.

REPRESENTATIVE NORDTVEDT asked Senator Goodover why he didn't think the ROC should do this study. Senator Goodover said it would not make difference who did the study but it seems the study to be done by the ROC on the classification system will be a large study and he didn't know if that committee would have the time to do this study as well.

REPRESENTATIVE BERTELSEN said being as they took out the funding for that classification study, maybe it would be wise to have an interim committee do the study contained in SJR 23.

REPRESENTATIVE KEENAN said this study should be a priority on the study list but if it is done by an interim committee there could be a chance that it may not be chosen to be done.

SENATOR GOODOVER said he would go along with whatever this committee decides to do. He said because the title of the resolution doesn't say "Revenue Oversight Committee", it might be easier to pass the resolution without amendments because the body of the resolution says the study will be done by the Revenue Oversight Committee.

REPRESENTATIVE NORDTVEDT moved to amend the resolution on page 1, line 18, by striking "cost to" and inserting "effect on".

The motion was voted on and PASSED unanimously.

REPRESENTATIVE NORDTVEDT moved SJR 23 BE CONCURRED IN, AS AMENDED.

The motion was voted on and PASSED unanimously.

SENATE BILL 414

SENATOR ROGER ELLIOTT, District 8, sponsor of the bill, asked if this committee would consider some amendments to SB 414. He said SB 414 is a bill that brings the Subchapter S laws in Montana in compliance with the federal laws. If we do not pass SB 414 or HB 621, we will have a situation where corporations are eligible for Subchapter S status on the federal level but not on the state level. Senator Elliott said SB 414 is now tabled in this committee and HB 621 is tabled in the Senate Taxation Committee. One of those two bills should be passed.

SENATOR ELLIOTT passed out copies of the proposed amendments. (See EXHIBIT 1.) He said the amendments will take away some of the objections voiced by the Department of Revenue.

REPRESENTATIVE SWITZER moved to take SB 414 OFF THE TABLE AND RECONSIDER PREVIOUS ACTION.

The motion was voted on and PASSED unanimously.

SENATOR ELLIOTT read a letter from the Department of Revenue that outlined problems with SB 414 and HB 621. (See EXHIBIT 2.)

SENATOR ELLIOTT said Montana statutes are tied to the federal codes, corporation income tax section. If we are going to exempt Subchapter S from that requirement, we will be stepping away from a practice we have had in the past. He said there may be a few corporations in the state who may not have elected to have Subchapter S status but those situations are rare.

DAN BUCKS, Deputy Director of the Department of Revenue, said the amendments are essential to making SB 414 workable from an administrative standpoint. The amendments are necessary if the Department of Revenue is to have an effective record on the state level as to which corporations are Subchapter S and which ones are not. If the department finds a taxpayer that is not conforming to the rules, the department should be able to enforce those rules rather than waiting for the Internal Revenue Service to enforce them.

With the proposed amendments, SB 414 and HB 621 would mean about the same to the department. The difference between the bills comes down to a legal point. The department was advised by one of their attorneys that it was preferable to conform to the federal laws by actually enacting the federal language or referring to the language in effect at the time of action by the legislature. That is what HB 621 does. Senate Bill 414 says Montana law will change in the future whenever federal law changes. The department believes that it is beneficial to follow the Internal Revenue codes. The difference between the bills is whether you can conform prospectively to any changes in the future and if that can be done constitutionally. House Bill 621 puts current federal Subchapter S laws into the state laws; any future federal changes would have to be added by legislative action. With SB 414, those changes would automatically be added to the state laws.

REPRESENTATIVE DEVLIN asked Senator Elliott if he went over the proposed amendments with the sponsor of HB 621. Senator Elliott said he did and the sponsor of HB 621 was agreeable with the amendments.

CHAIRMAN WILLIAMS asked what is the handicap of how the law is being enforced now. Senator Elliott said the state law would be in disparity with the federal law. Taxpayers would have to pay accountants more to keep two separate records - one for the state and one for the federal.

MR. BUCKS said either HB 621 or SB 414 should be enacted.

REPRESENTATIVE SWITZER moved the proposed amendments to SB 414 DO PASS.

The motion was voted on and PASSED unanimously.

REPRESENTATIVE SWITZER moved SB 414 BE CONCURRED IN, AS AMENDED.

The motion was voted on and PASSED. All committee members voted yes except Representatives Bertelsen, Keenan and Ream, who voted no.

The meeting was adjourned at 10:00 a.m.

MEL WILLIAMS, Chairman

Vicki Lofthouse, Secretary

STANDING COMMITTEE REPORT

April 12, 1983

MR. SPEAKER:

We, your committee on TAXATION

having had under consideration SENATE Bill No. 414

Third reading copy (Blue color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO COUPLE MONTANA'S DEFINITION OF "SMALL BUSINESS CORPORATION" TO THE FEDERAL DEFINITION FOR PURPOSES OF THE CORPORATE LICENSE TAX; AMENDING SECTIONS 15-31-201 AND 15-31-202, MCA; REPEALING SECTIONS 15-31-205 THROUGH 15-31-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

Respectfully report as follows: That SENATE Bill No. 414 be amended as follows:

1. Page 2, line 1.
Following: "DEPARTMENT"
Insert: "on or before the 15th day of the third month of the taxable year for which the election is to become effective"

2. Page 2, line 6.
Following: "year"
Insert: "and has filed a copy of such election with the department on or before the 15th day of the third month of the taxable year for which the election is to become effective"

~~XXXXXX~~
~~SB0414SS~~

STATE PUB. CO.

DAN YARDLEY, Chairman.

April 12, 19 81

3. Page 6, line 5.
Following: line 4
Insert: "NEW SECTION. Section 3. Failure to file - disqualifi tion. If a corporation does not file a copy of the federal Subchapter S election on or before the 15th day of the third month of the taxable year, the corporation shall not qualify as a small business corporation under this part for the taxable year.

NEW SECTION. Section 4. Termination and revocation. If the election under the provisions of Subchapter S is either terminated or revoked for federal purposes, the corporation must notify the department within 30 days of such termination or revocation. The department may terminate an election at any time if it discovers the corporation does not qualify as a small business corporation as provided for under the provisions of Subchapter S of the Internal Revenue Code of 1954."

Renumber: subsequent sections

AND AS AMENDED
BE CONCURRED IN

DAN YARDLEY, Chairman.

STATE PUB. CO.